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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,047	01/17/2002	Russ Egbert	1533.1510001/SRL/J-S	1188
26111	7590	05/17/2004	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/050,047	<b>Applicant(s)</b> EGBERT ET AL.	
	<b>Examiner</b> Drew E Becker	<b>Art Unit</b> 1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 12-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 22-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of group I in the response of April 5, 2004 is acknowledged. The traversal is on the ground(s) that there would not be a serious burden on the examiner. This is not found persuasive because the groups possessed different classifications, and therefore different searches, as shown in the restriction.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 12-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group, there being no allowable generic or linking claim.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-11 and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Terrell [Pat. No. 3,873,740].

Terrell teaches a method comprising adding soy protein and acidic phosphates to a food (column 13, line 50; column 7, line 7, line 45), inherently altering textural properties such as hardness, the acidic phosphate being sodium acid pyrophosphate (column 21,

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line 59), the soy protein being soy protein concentrate (column 14, line 25), the use of carrageenan (column 15, line 51), the use of egg albumin (column 15, line 54), inherently determining textural properties when the food is consumed, the use of about 4% sodium acid pyrophosphate, about 1.5% carrageenan, about 94.5% soy protein concentrate in the composition, and 0.01-10% sodium acid pyrophosphate in the food (column 16, Table D).

5. Claims 1-7, 9, 11, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 1368402.

GB 1368402 teaches a method comprising adding soy protein concentrate and sodium acid pyrophosphate to a food (page 2, lines 14 & 96), inherently altering textural properties such as hardness, the use of gelatin (page 3, line 81), inherently determining textural properties when the food is consumed, and 0.01-10% acidic phosphate in the food (page 3, line 95).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Drew E Becker  
Primary Examiner  
Art Unit 1761

5-14-09